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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,482	01/20/2006	Eric Favre	WBL0003	2121

27268 7590 09/24/2010  
BAKER & DANIELS LLP  
300 NORTH MERIDIAN STREET  
SUITE 2700  
INDIANAPOLIS, IN 46204

EXAMINER
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ALEXANDER, REGINALD

ART UNIT	PAPER NUMBER
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3742

NOTIFICATION DATE	DELIVERY MODE
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09/24/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

intead@bakerd.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/565,482	<b>Applicant(s)</b> FAVRE ET AL.	
	<b>Examiner</b> Reginald L. Alexander	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4,7-11 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,7 and 18-22 is/are allowed.
- 6) ☒ Claim(s) 8,9,11 and 28 is/are rejected.
- 7) ☒ Claim(s) 10 and 23-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C 103(a) as being unpatentable over Favre in view of Lin.

There is disclosed in Favre a device for preparing a beverage, comprising a capsule carrier 9 comprising a bottom wall, an intermediate bottom wall in the form of a filtering wall 10 having a plurality of perforating spikes 22 and outflow orifices (col. 5, lines 47-52), and a lower cavity portion arranged between the filtering wall and the bottom wall wherein the bottom wall comprises an outflow channel 24 surrounded by lips which protrude upwards and have openings or slots 27 for flow of beverage out from the capsule carrier, the lips surrounding the outflow opening on all sides.

Lin discloses that it is known in the art to provide, at a bottom wall of a beverage material carrier, an outflow channel 33 surrounded by lips 32 which protrude upwards, the lips having slots enabling liquid to flow through the lips and to the channels.

It would have been obvious to one skilled in the art to provide the bottom wall of Favre with the surrounding lips and slots taught in Lin, in order to delay rate at which beverage leaves the device. Thus, allowing for a richer coffee flavor.

Claims 8, 9 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond et al. '987 in view of Fond et al. '595.

Fond '987, as discussed above, discloses the use of device for preparing a beverage from a capsule, wherein the device includes an injection head comprising a perforating surface 55 having a shape which is substantially curved and convex, provided with a perforating spike on the surface and a water supply channel arranged to supply water onto the surface.

Fond '595, as discussed above, discloses the use of a plurality of perforating spikes on a perforating surface, the spikes having a smooth tapered shape without sharp edges.

It would have been obvious to one skilled in the art to modify the injection head perforating surface of Fond '987 with that taught in Fond '595, and provide plural spikes, in order to provide an even distribution of hot water to the product.

In regards to the spikes not having sharp edges, it is apparent that the spikes of Fond do not have sharp side edges.

#### ***Allowable Subject Matter***

Claims 10 and 23-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 4, 7 and 18-22 are allowed.

### ***Response to Arguments***

Applicant's arguments filed 09 August 2010 have been fully considered but they are not persuasive.

Applicant argues that Lin fails to disclose, in the ridge that surrounds each outflow, any slot or opening therein.

What Lin shows in figure 3 appears to be a lip extending upwardly from an area of a base, the area including an outflow channel. The lips or ridges having slots to allow passage of beverage to the channel while creating a delay time within a lower cavity of the base.

While Lin does not show this arrangement at the lowest point of the cavity, such is moot when using the arrangement with the device of Favre. Favre shows the beverage exit channel at the lowest point of the cavity. The lips would surround this area by default. Thus, the claimed arrangement would be met by the combination of Favre and Lin.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
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